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CHESAPEAKE & O. RY. CO. *v.* REBMAN & CLARK.

Nov. 16, 1916.

[90 S. E. 629.]

1. **Carriers (§ 218 (6)*)—Live Stock—Failure to Deliver—Liability.**—Under a bill of lading fixing live stock value and limiting recovery to that sum, the shipper can recover any damage less than such valuation which resulted from delivery of other and inferior stock, although he realized on the market more than such valuation.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 674-696, 940-945, 949; Dec. Dig. § 218 (6).* 16 Va.-W. Va. Enc. Dig. 249.]

2. **Carriers (§ 218 (10)*)—Live Stock—Notice of Damages.**—Failure to give notice of damages by delivery of other and inferior live stock instead of those consigned, within five days of delivery, does not preclude recovery where notice was given without delay on discovery of the loss.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 674-696, 947; Dec. Dig. § 218 (10).* 2 Va.-W. Va. Enc. Dig. 692.]

Error to Circuit Court, Craig County.

Action by Rebman & Clark against the Chesapeake & Ohio Railway Company. Judgment, on demurrer to the evidence, in favor of plaintiffs, and defendant brings error. Affirmed.

J. M. Perry, of Staunton, for plaintiff in error.

Hugh A. White, of Lexington, and *G. W. Layman*, of New Castle, for defendants in error.

CITY OF RICHMOND *v.* DREWRY-HUGHES CO.

Nov. 23, 1916.

[90 S. E. 635.]

1. **Municipal Corporations (§ 956 (2)*)—Taxation—Levy—"Intangible Personal Property."**—Acts Ex. Sess. 1915, c. 85, provides that all taxable real estate and tangible personal property shall be subject to local taxation only, and that licenses on all taxable intangible personal property and other classes of property not specifically enumerated shall be subject to state taxation only, but that a city shall not be prevented from levying a tax on said segregated intangible personal property at a rate not to exceed 30 cents upon \$100, and that the capital of merchants shall be subject only to be taxed locally as prescribed by law. Held, that the city of Richmond, although it has plenary powers of taxation under its charter, is limited in its

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power to tax the capital of merchants, which belongs to the class known as "intangible personal property," to 30 cents on \$100.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. § 2011; Dec. Dig. § 956 (2).* 10 Va.-W. Va. Enc. Dig. 232.]

For other definitions, see *Words and Phrases*, First and Second Series, *Intangible Property*.]

2. Municipal Corporations (§ 956 (1)*)—Taxation—Levy—Statute—Construction.—Where the interpretation of a statute is doubtful as to the authorization to levy a tax, the tax cannot be collected as a tax must be plainly authorized before the citizen can be charged therewith.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. § 2010; Dec. Dig. § 956 (1).* 10 Va.-W. Va. Enc. Dig. 227.]

Error to Hustings Court of City of Richmond.

Proceeding by the Drewry-Hughes Company against the City of Richmond. Judgment for plaintiff, and defendant brings error. Affirmed.

H. R. Pollard, of Richmond, for plaintiff in error.

Geo. Bryan and Hill Montague, both of Richmond, for defendant in error.

BRISTOL TELEPHONE CO. *v.* STOCKTON'S ADM'R.

Nov. 16, 1916.

[90 S. E. 636.]

1. Master and Servant (§ 149 (2)*)—Injuries to Servant—Negligence.—Where plaintiff's intestate, killed by contact with a high-powered wire, was a well-developed man physically and mentally, who had never clipped cable in proximity to high-power wires, but was not without experience in the construction of telephone lines, and was repeatedly warned as to the danger, and that contact with the high-power wires near which he was to work would kill him, defendant was not guilty of actionable negligence in directing him to ascend the pole, since a master is not an insurer of his servant's safety, and is liable for the consequences, not of danger, but of negligence in failing to adequately instruct an inexperienced servant as to unknown danger.

[Ed. Note.—For other cases, see *Master and Servant*, Cent. Dig. § 295; Dec. Dig. § 149 (2).* 9 Va.-W. Va. Enc. Dig. 697.]

2. Master and Servant (§ 265 (11)*)—Injuries to Servant—Evidence—Presumptions and Burden of Proof.—In an action for the

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